THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 2580 of 2004

O r d e r:

The award dated 06.09.2003, passed by the Industrial Tribunal, Anantapur and published on 10.12.2003 is called in question in this writ petition, as being illegal and arbitrary.

The petitioner is a Transporter. The 2nd respondent joined him as Mazdoor in 1997. He was removed from service on the allegation of theft. He raised industrial dispute in I.D. No. 258 of 1999 on the file of the Industrial Tribunal, Anantapur. During the pendency of the I.D., on a joint memo filed by the parties, the I.D. was allowed, and in terms thereof, the petitioner was reinstated into service. It is the case of the petitioner that 2nd respondent pursuant to his reinstatement, absented from duty and misbehaved with the Manager. Therefore, after an enquiry, for the proved misconduct, he was removed from service. The 2nd respondent again raised industrial dispute in I.D. No. 243 of 2001, which by award dated 06.09.2003 was allowed granting compensation of Rs.30,000/- to the 1st respondent. Aggrieved thereby, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent.

The learned counsel for the petitioner submitted that the petitioner is a small Transporter. The 2nd respondent though on earlier occasion was dismissed from service, but having regard to the undertaking given by him that he will not conduct any misconduct in future, he was taken back into service. However, the 2nd respondent upon his reinstatement, not only absented from duty but also misbehaved with the Manager, and therefore, after conducting enquiry and providing opportunity, he was removed from service. He submitted that the Industrial Tribunal having found that the misconduct alleged against the 2nd respondent is proved and reasonable opportunity was given to him before his removal, committed an error in granting compensation, more so when he had worked for less than two years. He thus prayed that the impugned award be set aside and the writ petition be allowed.

The 2nd respondent filed counter in vacate stay petition, and the counsel appearing on his behalf submitted that no opportunity whatsoever was given to the 2nd respondent to cross-examine the witness of the management, and that the petitioner with a *mala fide* intention to remove him from service, created false attendance register. While denying the charges leveled against the 2nd respondent, he

submitted that the compensation granted by the Industrial Tribunal on his request instead of reinstatement, is very less and prayed for its enhancement to Rs.2,00,000/-.

There is no doubt that the Industrial Tribunal concurred with the findings arrived at by the Enquiry Officer and that it negatived the contention of the 2nd respondent that no reasonable opportunity was given to him and that there was no material on record to prove his misconduct. The Industrial Tribunal though on the first charge came to the conclusion that absenteeism alleged against the 2nd respondent is a serious misconduct, but on the second charge, which relate to acerbic utterances, it came to the conclusion that the 2nd respondent had made such utterances out of frustration due to strained relations. The 2nd respondent though absented from duty, the Industrial Tribunal observed that the petitioner ought to have given him an opportunity to join duty by imposing some other punishment. However, considering the fact that removal from service was disproportionate to the proved misconduct, and having regard to the fact that the petitioner instead of reinstatement into service had sought payment of compensation, the Industrial Tribunal in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947 instead of ordering reinstatement of the 2nd respondent into service, had ordered payment of compensation of Rs.30,000/- to him, more so keeping in view the strained relations between the petitioner and the 2nd respondent, which make them impossible to continue the relationship of employer and employee. It is not the case of the petitioner that the Industrial Tribunal cannot grant compensation in exercise of its discretionary power. The grant of compensation of Rs.30,000/- to the petitioner in lieu of reinstatement, by the Industrial Tribunal, in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947, in the facts and circumstances of the case, is justified, and it cannot be said that the compensation granted is too high or low, warranting its reduction or increase, by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

There is no merit in the writ petition and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 15th February, 2006.

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